IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 30/07/2002

CORAM

THE HONOURABLE MR.JUSTICE V.KANAGARAJ

WRIT PETITION NO.19911 of 2002
AND
W.P.M.P.NO.27485 of 2002

N.V.Seema. .. Petitioner

-Vs-

1.The Deputy General Manager(West),
Office of the Deputy General Manager
(West), BSNL, Chennai Telephones.

2.The Divisional Engineer,
BSNL, Chennai Telephones,
Kodambakkam, Exchange,
No.65, Ganga Nagar,
Chennai-600 024.

3.The Accounts Officer (TR),
BSNL Chennai Telephone(West). .. Respondents

Writ Petition filed under Article 226 of the Constitution of India
praying to issue a Writ of declaration as stated therein.

For petitioner : Mr.G.Jayachandran

For respondents : Mr.G.Karthikeyan,ACSC

:O R D E R
Petitioner has filed the above writ petition praying to issue a writ of declaration declaring the disconnection of the petitioner's telephone No.4866622 as arbitrary and illegal and consequently direct the respondents to reconnect the Telephone No.4866622 immediately in so far as the petitioner is concerned.
2. Today, when the above writ petition was taken up for consideration in the presence of the learned counsel for the petitioner and the learned Additional Central Government Standing Counsel, having regard to the materials placed on record and upon hearing the learned counsel for both, what could be gathered is that the petitioner is not in arrears of any Telephone Bills till date; that her husband is a subscriber to Telephone No.4837227 and he was also prompt in payment of telephone bills, but all of a sudden he received a bill

dated 1.9.1997 for a sum of Rs.43,943/-, which was exorbitant, unimaginable and disproportionate in comparing the use of telephone; that in spite of complaining about the same to the respondents, the subsequent bills dated 1.11.1997 for a sum of Rs.34,197/- and 1.9.1998 for a sum of Rs.17,8 28/- also came which were also exorbitant and therefore, he disputed the same and made complaints to the respondents; that the respondents without investigating the same disconnected the telephone of the petitioner's husband in the month of October 1997 on the ground of non-payment of the above bills; that the petitioner's husband filed a writ petition before this Court in W.P.No.11576 of 2002 and this Court by order dated 15.4.2002 directed the respondents to refer the dispute under Section 7(B) of the Indian Telegraphs Act within twelve weeks from the date of communication of the order.

3. It could be further gathered that thereafter, the respondents issued a letter dated 1.5.2002 to the petitioner thereby demanding her to pay the disputed bills relating to her husband's telephone No.4837 227; that though the petitioner sent a reply to the respondents the third respondent without considering the petitioner's reply, disconnected the petitioner's telephone No.4866622 for the alleged nonpayment of disputed telephone bills of her husband. In such circumstances, the petitioner has come forward to file the above writ petition praying for the relief extracted supra.

4. The main contention of the learned counsel for the petitioner is that it is not open to the respondents to disconnect the telephone of the petitioner for the arrears of the telephone owned by her husband. In support of his contention the learned counsel for the petitioner would cite the following two judgments:-

i)KAILASH PRASAD MODI vs. CHIEF GENERAL MANAGER, ORISSA TELECOMMUNICATION ANDOTHERS reported in (2002-1 Law Weekly 668);
ii)B.V.K.KRISHNAN AND OTHERS vs.M/S.BSNL CHENNAI TELEPHONE BY ITS DEPUTY GENERAL MANAGER (WEST) AND OTHERS reported in (2002)1 M.L.J. 512)

5. In the first judgment cited above, the Orissa High Court after considering Rules 2 (pp) and 433 has held:

"disconnection of a personal telephone of son of an erstwhile Director of a company on the ground of non-payment of due of the Telephone of that Company cannot be disconnected applying Rule 433 on the ground that the company is a juristic person and when it is the subscriber, its liability is not transferred to its director and that in a Private Limited Company the liabilities of the directors are limited and as such they are not subscribers of the company's telephone."

6. In the second judgment cited above, a learned single Judge of this Court after considering the Rule 443 of the Indian Telegraph Rules, 1951 has held:

"It is true that the subscriber Miss Ramyah having a telephone bearing No.4863599 failed to pay the telephone bills. It is also true that the respective petitioner in W.P.Nos.658,659 and 660 of 2002 is her father, mother

and sister respectively and that they are having separate telephones in their names in the very same house. Admittedly, there is no statutory provision which enables the respondents to disconnect the telephone of the other subscribers. No doubt, Rule 443 of the Indian Telegraph Rules, 1951 empowers the authorities to disconnect any telephone on the ground of non-payment of bill."

However, the learned Judge has allowed the W.P. And has given the relief to the petitioner therein. The above two judgments cited on the part of the learned counsel for the petitioner would squarely apply to the facts of the case on hand.

7. However, it has paramountly become necessary on the part of this Court to extract the much debated Rule 443 of the Indian Telegraph Rules, 1951 and to extract the import and actual meaning of the said Rule:

"443.Default of Payment – If, on or before the due date, the rent or other charges in respect of the telephone service provided are not paid by the subscriber in accordance with these rules, or bills for charges in respect of calls (local and trunk) or phonograms or other dues from the subscriber are not duly paid by him, any telephone or telephones or any telex service rented by him may be disconnected without notice. The telephone or telephones or the telex so disconnected may, if the Telegraph Authority thinks fit, be restored, if the defaulting subscriber pays the outstanding dues and the reconnection fee together with the rental for such portion of the intervening period (during which the telephone or telex remains disconnected) as may be prescribed by the Telegraph Authority from time to time. The Subscriber shall pay all the above charges within such period as may be prescribed by the Telegraph Authority from time to time."

8. The import of the said Rule lays emphasis on only the subscriber to pay the bills in respect of the telephone services provided for him in accordance with the rules and there is absolutely none other much less near relatives like spouse, brother or sister or parents etc. have been either indicated in any manner and in case of default in payment of the charges. It is only the telephone contracted with the Department by the defaulting subscriber could be disconnected and there is absolutely no indication to disconnect the telephone of another whatever be the relationship of the said person with the subscriber. Therefore, the act of the respondents in disconnected the telephone owned by the petitioner for the default com mitted on the part of her husband, has absolutely no bearing on Rule 443.

9. In fact, Rule says that the subscriber for having defaulted in the payment of the charges for one telephone owned by him, the other telephone or fax or such other facilities enjoyed by the same subscriber could only be disconnected and not the telephone owned by any other person much less his near relatives as it is the wife in the case in hand. Hence, this Court does not see any justification in the act perpetrated on the part of the respondents in disconnecting the telephone No.4866622 pertaining to which the petitioner is that subscriber having entered into a contract with the

Department and herself not being the defaulter either regarding that telephone which is disconnected or any other telephone owned by her.

In result,

(i)the above writ petition is allowed;
(ii)the respondents are directed to reconnect the petitioner's Telephone No.4866622 within a period of one week from the date of receipt of a copy of this order;
(iii)however, in the circumstances of the case, there shall be no order as to costs;

(iv)consequently, W.P.M.P.NO.27485 of 2002 is closed.

30.7.2002.

V.KANAGARAJ,J

Index:Yes
Internet:Yes
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To
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